

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAGEN INVESTMENTS LLC,
 Plaintiff(s),

v.

CANNON FINANCIAL INSTITUTE, INC.,
 Defendant(s).

Case No. 2:13-cv-00868-GMN-NJK

ORDER DENYING MOTION FOR
 ENTRY OF DEFAULT JUDGMENT

(Docket No. 40)

Pending before the Court is Plaintiff's motion for entry of default judgment against Defendants Gary V. Powell and CenterG, Inc. ("Defendants"). Docket No. 40. The Court finds the motion properly resolved without oral argument. Local Rule 78-2. For the reasons discussed more fully below, the motion is hereby **DENIED** without prejudice.

I. PERSONAL JURISDICTION

The Court's personal jurisdiction over a defendant is generally a waivable defense that the Court does not raise *sua sponte*. See Fed. R. Civ. P. 12(h)(1). Nonetheless, "[w]hen entry of default judgment is sought against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties." *Tuli v. Republic of Iraq*, 172 F.3d 707, 712 (9th Cir. 1999). Thus, after giving the plaintiff notice and an opportunity to assert jurisdictional facts, the Court may dismiss an action for lack of personal jurisdiction. See *id.* at 712-13. The pending motion for default judgment does not address the constitutionality of the Court's exercise of personal jurisdiction over Defendants.

1 The pending motion seeks entry of default judgment against Defendants, who are both alleged
2 to be citizens of North Carolina. *See* First Amended Complaint (“FAC”) ¶¶ 19-20. Plaintiff is a Nevada
3 citizen. *Id.* at ¶ 17. The FAC further alleges that Defendants willfully copied copyrighted material “from
4 a source emanating from Nevada.” *Id.* at ¶¶ 25-26. The FAC also alleges that Defendants knew or
5 should have known that the copyrighted material was originally published by a Nevada entity and is of
6 a specific interest to Plaintiff. *Id.* at ¶¶ 39-42. Similarly, the FAC alleges that Defendants purposefully
7 directed and expressly aimed their infringing activities at Plaintiff in Nevada. *Id.* at 49-52.

8 It is not clear to the Court at this juncture that a sufficient factual showing on personal
9 jurisdiction has been made. For example, in determining whether a defendant “expressly aimed” his
10 intentional act to the forum state, the defendant’s knowledge is key. Recently, the Ninth Circuit found
11 such knowledge sufficiently established for willful copyright infringement where the parties had a long-
12 standing business relationship and the plaintiff had sent cease-and-desist letters to the defendant from
13 the forum state. *See Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 671, 678 (9th Cir.
14 2012). The Ninth Circuit distinguished previous cases finding an insufficient showing of knowledge,
15 such as *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797 (9th Cir. 2004). In *Schwarzenegger*,
16 an Ohio company’s use of the actor’s likeness was found to be insufficient to show express aiming even
17 though the defendant may have foreseen that any harm would befall the plaintiff in California. 374 F.3d
18 at 800; *see also Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006) (finding no express
19 aiming where the acts in question may have made it foreseeable that harm would be felt in the forum
20 state, but did not rise to the level of knowledge); *808 Holdings LLC v. Collective of January 3, 2012*
21 *Sharing Hash*, 2013 WL 1390384, *5-6 (C.D. Cal. Apr. 3, 2013) (finding no express aiming for
22 copyright infringement despite, *inter alia*, fact that the copyrighted video contained a watermark with
23 the plaintiff’s information or a notice apprising viewers of the plaintiff’s address).

24 At this time, the Court will not resolve the personal jurisdiction issue. Instead, the Court will
25 **DENY** without prejudice the pending motion for entry of default judgment. Plaintiff may renew its
26 motion for default judgment by asserting jurisdictional facts and providing legal argument regarding the
27 ability of the Court to exercise personal jurisdiction over Defendants.
28

III. CONCLUSION

IT IS SO ORDERED.

Nancy J. Koppe
United States Magistrate Judge